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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/005,522	12/03/2001	Paul Theodore VanGompel	659/920	2410

7590

04/09/2002

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EXAMINER

RUHL, DENNIS WILLIAM

ART UNIT

PAPER NUMBER

3761

DATE MAILED: 04/09/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/005,522

Applicant(s)

VANGOMPEL ET AL.

Examiner

Dennis Ruhl

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 35-44 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 35-44 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4. 6) ☐ Other:

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With respect to the IDS of 2-26-02 applicant has not provided copies of the cited references as they were provided in the parent case 08/600317. Application 08/600317 is being prepared for issue and is not available to the examiner for review so the examiner requests that applicant please provide copies of the foreign references and other articles, etc.. The examiner has reviewed and considered all of the US patents cited but does not have access to the many foreign references. Applicant's cooperation in this matter is appreciated.

Applicant's counsel is also thanked for faxing a copy of the allowed claims of 08/600317 to the examiner so that any double patenting issues can be addressed in this first office action. This will help expedite the prosecution of the instant application.

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 35-44 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With respect to claim 35, the language "wherein a garment attachment point is defined where said fixed and said free end portions meet each other" is not clear to the examiner. What exactly is the garment attachment point? In what manner or how do the fixed and free portions meet each other? These portions are part of the same element (the garment attachment panel) so is this language reciting the point where the garment attachment panel goes from being attached to the underside of the absorbent pad to being unattached? The examiner is just not clear as to what this language

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defines. Also, the language "said fastener elements being configured as to provide anchoring means" is confusing to the examiner. Previously in the claim applicant recited "including means for anchoring said free portions ..." so when applicant claims the fastener elements as being configured to provide anchoring means it is not clear if there are two sets of anchoring means or if the language referred to above is actually referring to the previously claimed means for anchoring. Additionally, the term "anchoring means" in the phrase "to provide anchoring means" is considered indefinite because the means has no function recited to make it clear what the means does. This is not a proper means plus function recitation. The last paragraph of the claim needs to be amended to clearly recite what is being claimed.

With respect to claim 36, there is no antecedent basis for "the predetermined particular confinement". No predetermined confinement of any kind has previously been claimed.

With respect to claim 38, there is no antecedent basis for "the lateral disposition".

With respect to claim 39, there is no antecedent basis for "each side" of said crotch portion of said undergarment.

Correction of the above is required.

### ***Double Patenting***

3. Claims 35-44 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 35-44 of copending Application No. 08/600317. Although the conflicting claims are not identical, they are not patentably distinct from each other because the instant pending claims

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simply recite a width of the anchoring means. This language is interpreted as being simply a width of an attachment area. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the means for anchoring the garment attachment panels with a width in the claimed range. The claims range includes a situation where the anchoring means are 0.25 inches in width. This is a small width and one of ordinary skill in the art would find it obvious to make an attachment element (anchoring means) of a garment attachment panel from the claimed widths. Another reason for a terminal disclaimer is to maintain common ownership of claims of overlapping scope. The claims of 08/600317 cannot be owned by entity A while the claims of the instant application are owned by entity B. This would effectively result in two parties having the right to exclude for more or less the same invention..

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dennis Ruhl whose telephone number is 703-308-2262. The examiner can normally be reached on Tuesday through Friday.

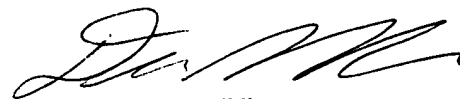
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on 703-308-2702. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3590 for regular communications and 703-305-3590 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.



**DENNIS RUHL**  
**PRIMARY EXAMINER**

DR  
April 6, 2002